

NOTICE  
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2012 IL App (4th) 110347-U

Filed 8/27/12

NO. 4-11-0347

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

|                                      |   |                     |
|--------------------------------------|---|---------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from         |
| Plaintiff-Appellee,                  | ) | Circuit Court of    |
| v.                                   | ) | McLean County       |
| DANDRAE JOHNSON,                     | ) | No. 10CF203         |
| Defendant-Appellant.                 | ) |                     |
|                                      | ) | Honorable           |
|                                      | ) | Charles G. Reynard, |
|                                      | ) | Judge Presiding.    |

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JUSTICE STEIGMANN delivered the judgment of the court.  
Justice Knecht concurred in the judgment.  
Justice Cook specially concurred.

**ORDER**

- ¶ 1 *Held:* The appellate court affirmed the defendant's conviction and sentence for unlawful possession of a weapon by a felon, rejecting his claims that (1) the State failed to prove the *corpus delicti* of the offense charged, (2) his counsel was ineffective, and (3) the trial court's imposition of a 20-year sentence was excessive.
- ¶ 2 Following an August 2010 trial, a jury convicted defendant, Dandrae Johnson, of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010)). The court later sentenced defendant to 20 years in prison.
- ¶ 3 Defendant appeals, arguing that (1) the State failed to prove the *corpus delicti* of the offense charged, (2) he received ineffective assistance of trial counsel because his counsel failed to (a) prevent the jury from considering other-crimes evidence and (b) determine whether his presentence investigation report (PSI) was accurate; and (3) the trial court's imposition of a

20-year prison sentence was excessive. We disagree and affirm.

¶ 4

## I. BACKGROUND

¶ 5

### A. The Events That Occurred Prior to Defendant's Jury Trial

¶ 6

In March 2010, the State charged defendant with unlawful possession of a weapon by a felon. In August 2010, immediately prior to *voir dire*, the following discussion occurred:

"THE COURT: \*\*\*

[Defense c]ounsel. Just double-checking in terms of advising the [venire] of the charge that's pending. Is there any concern about reading the charge as it has been returned in the Bill of Indictment?

[DEFENSE COUNSEL]: Let me see.

No. I'm sorry, your honor. I thought the indictment read as the information, but in that much detail, no, there's no problem with that."

¶ 7

After the venire entered the courtroom, the attorneys introduced themselves and the trial court addressed the venire members as follows:

"There is a charge today that is on trial. [The court is] going to read you that charge from the Bill of Indictment.

[The court informs] you in advance that the charge against \*\*\* [d]efendant is not evidence against him. The charge is simply the formal way that \*\*\* [d]efendant is required to appear in court and for a trial to be conducted. The charge reads as follows: The

Grand Jury of McLean County charges that [defendant], on or about the 9th day of March 2010, committed the offense of Unlawful Possession of a Weapon by a Felon, in that \*\*\* [d]efendant knowingly possessed a weapon, specifically, being an American Gray silver revolver handgun, \*\*\* with [d]efendant having been previously convicted of a felony under the laws of the State of Illinois being the offense of Unlawful Possession of a Weapon by a felon \*\*\*, and the offense of Unlawful Delivery of a Controlled Substance \*\*\*."

After the court administered their oath, the jurors considered the following evidence.

¶ 8 B. Defendant's August 2010 Jury Trial

¶ 9 1. *The State's Evidence*

¶ 10 In March 2010, Bloomington police officer Brice Stanfield arrived at an apartment to assist in the consensual search of that dwelling. Upon entering, Stanfield observed that Rachael Matherly (the leaseholder), defendant, and two other adult males were present. During the search, another officer summoned Stanfield to a back bedroom and pointed out a small, rusted revolver on a closet shelf that was concealed under some clothing. Stanfield placed the revolver in an envelope and asked separately defendant and Matherly about the revolver. Both denied any knowledge of the gun. After Stanfield placed Matherly under arrest, defendant admitted that he owned the revolver. Stanfield then placed defendant under arrest. Stanfield denied ever showing defendant the revolver he seized during their encounter.

¶ 11 Another officer interrogated defendant at the police station. A recording of that

interview, which was played for the jury, revealed that two days earlier, defendant received the revolver from a person he declined to identify. Defendant described the gun as a small, rusted, unloaded revolver that had a "rusted out" firing pin. Defendant stated that he had no intentions of using the revolver but kept it because in 2001, he assisted the police in solving a crime and had recently heard rumors regarding retaliation for providing that assistance. Defendant then inquired whether there was anything he could do to "help [him] with this case."

¶ 12 After the State presented evidence that scientific tests did not reveal any fingerprints on the revolver, the trial court read People's exhibit 3a—a stipulation agreed to by the parties—which informed the jury, as follows: "[O]n January 28th, 2005, \*\*\* defendant \*\*\* was convicted of the felony offense of Unlawful Delivery of a Controlled Substance \*\*\*."

¶ 13 *2. Defendant's Evidence*

¶ 14 Defendant testified that in early March 2010, he resided with his girlfriend and their son but had been "forced out." Because defendant had to maintain housing as a condition of his mandatory supervised release (MSR), Matherly agreed to let defendant live in her apartment until his MSR term expired.

¶ 15 On March 9, 2010, defendant was sitting in the living room of Matherly's apartment with two friends when police officers performed a search in connection with the terms of his MSR. Defendant remained in the living room, while police searched the apartment. Stanfield later questioned defendant in the hallway located just outside the apartment about the revolver. After denying knowledge of the gun, defendant stated that he was handcuffed and placed back on the living room couch. Defendant then saw Matherly, who was handcuffed, being led out of the apartment in tears. When defendant's parole officer inquired further about

the revolver, defendant admitted owning the gun, stating that he would "take the weight" for it.

¶ 16 Defendant acknowledged that during the interrogation conducted at the police station, he told police that he owned the revolver but claimed that his admission in that regard was false. Defendant explained that he (1) neither saw the revolver before March 9, 2010, nor handled it and (2) admitted owning the gun to protect Matherly. Defendant was able to describe the revolver because as Stanfield was questioning him in the hallway, his parole officer was questioning Matherly with the gun in plain sight. Defendant "guessed" that the gun was unloaded. Defendant stated that (1) no one gave him the revolver and (2) he did not (a) buy the revolver, (b) find the revolver, or (c) need a gun for protection. Defendant acknowledged that he had been twice convicted of possession of cocaine with intent to deliver, as well as convicted of escape, burglary, and stalking.

¶ 17 Defendant confirmed that during the police investigation, he (1) changed his story from not having any knowledge of the revolver to admitting that he possessed it for protection and (2) asked whether his cooperation would mitigate the seriousness of the charges against him.

¶ 18 *3. The State's Evidence in Rebuttal*

¶ 19 Stanfield testified that at Matherly's apartment, (1) he was the only person who made physical contact with the revolver; (2) defendant never saw the revolver he seized; and (3) he questioned Matherly and then defendant outside of each other's presence.

¶ 20 *4. The Jury's Verdict and the Trial Court's Sentence*

¶ 21 On this evidence, the jury convicted defendant of unlawful possession of a weapon by a felon. Following a February 2011 hearing, the court sentenced defendant to 20 years in prison.

¶ 22 This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 Defendant argues that (1) the State failed to prove the *corpus delicti* of the offense charged, (2) he received ineffective assistance of trial counsel because his counsel failed to (a) prevent the jury from considering other-crimes evidence and (b) determine whether his presentence investigation report (PSI) was accurate; and (3) the trial court's imposition of a 20-year prison sentence was excessive. We address defendant's contentions in turn.

¶ 25 A. Defendant's *Corpus-Delicti* Claim

¶ 26 Defendant argues that the State failed to prove the *corpus delicti* of the offense charged. Specifically, defendant contends that "the State did not present any evidence, independent of his confession, that [he] had knowledge of the gun or immediate and exclusive control of the area in which the gun was found." We disagree.

¶ 27 1. *Corpus Delicti Defined*

¶ 28 In *People v. Hurry*, 2012 IL App (3d) 100150, ¶ 11, 967 N.E.2d 817, 820, the appellate court explained *corpus delicti*, as follows:

"Under Illinois law, proof of an offense requires proof of two distinct propositions or facts beyond a reasonable doubt: (1) that a crime occurred, *i.e.*, the *corpus delicti*; and (2) that the crime was committed by the person charged. [Citation.] While defendant's confession may be integral to proving the *corpus delicti*, it is well established that proof of the *corpus delicti* may not rest exclu-

sively on defendant's extrajudicial confession, admission, or other statement. [Citation.] Still, the *corpus delicti* is not required to be proved beyond a reasonable doubt exclusively by evidence independent of the confession. [Citation.] If there is evidence of corroborating circumstances which tend to prove the *corpus delicti* and correspond with the circumstances related in the confession, both the circumstances and the confession may be considered in determining whether the *corpus delicti* is sufficiently proved in a given case."

¶ 29

### 2. *The Standard of Review*

¶ 30

"When considering a challenge to a criminal conviction based on the sufficiency of the evidence, the relevant question on appeal is whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Jackson*, 2012 IL App (1st) 092833, ¶ 22, 2012 WL 2513998, at \*6. A conviction will not be reversed unless the evidence is so improbable or unsatisfactory as to create a reasonable doubt of the defendant's guilt. *Id.*

¶ 31

### 3. *Sufficiency of the Evidence Presented*

¶ 32

To sustain a conviction for unlawful possession of a weapon by a felon, the State must prove (1) defendant has a prior felony conviction and (2) the defendant had knowing possession of the weapon. *People v. Brown*, 327 Ill. App. 3d 816, 824, 764 N.E.2d 562, 570 (2002). "Knowing possession" can be either actual or constructive. *Id.* Constructive possession requires a defendant to have (1) knowledge of the presence of the weapon and (2) exercised

immediate and exclusive control over the area where the weapon was found. *Id.* Knowledge of the existence of a firearm within a defendant's possession may be inferred from circumstantial evidence. *Brown*, 327 Ill. App. 3d at 824-25, 764 N.E.2d at 570.

¶ 33 In this case, defendant's confession concerned his ownership of the revolver police seized from Matherly's apartment. The corroborating evidence the State presented in addition to that confession, which tended to prove defendant's possession and control of the revolver, showed that (1) Stanfield recovered a small, rusty, unloaded revolver from Matherly's apartment; (2) defendant was living with Matherly at the time Stanfield recovered the revolver, (3) defendant initially denied any knowledge of the revolver but later described the revolver in detail, stating that he had seen the revolver while Matherly was being questioned; and (4) Stanfield testified that defendant never had an opportunity to see the revolver he seized.

¶ 34 Here, the State's evidence showed that, at a minimum, defendant—who was living with Matherly—had control over the location where the gun was found, which was sufficient to establish his constructive possession of that weapon. See *People v. McCarter*, 339 Ill. App. 3d 876, 879, 791 N.E.2d 1278, 1280 (2003) ("Control over the location where the weapons were found gives rise to an inference that defendant possessed the weapons"); see also *People v. Hampton*, 358 Ill. App. 3d 1029, 1032, 833 N.E.2d 23, 25-26 (2005) ("[I]n order for the inference to arise of a defendant's knowledge of the evidence, the evidence must be (1) found within the defendant's living quarters or other place over which the defendant has regular, ongoing control; and (2) an item that human experience teaches is rarely, if ever, found unaccountably in such a place"). Accordingly, the record before us clearly supports the jury's finding that defendant was guilty.

¶ 35 B. Defendant's Ineffective-Assistance-of-Counsel Claims

¶ 36 Defendant next argues that he received ineffective assistance of trial counsel because his counsel failed to (1) prevent the jury from considering other-crimes evidence and (2) determine whether his presentence investigation report (PSI) was accurate. For the reasons that follow, we disagree.

¶ 37 1. *Strickland's Two-Pronged Test for Ineffective-Assistance-of-Counsel Claims*

¶ 38 Ineffective-assistance-of-counsel claims are judged under the familiar standard set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). To prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that counsel's performance was deficient and that the deficient performance prejudiced the defendant. *People v. Cathey*, 2012 IL 111746, ¶ 23, 965 N.E.2d 1109, 1115 (citing *Strickland*, 466 U.S. at 687). "More specifically, a defendant must show that counsel's performance was objectively unreasonable under prevailing professional norms and that there is a 'reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Id.* (quoting *Strickland*, 466 U.S. at 694). A "reasonable probability" is one that is "sufficient to undermine confidence in the outcome" of the defendant's trial. *Strickland*, 466 U.S. at 694. To prevail on a claim of ineffective assistance of counsel, a defendant must satisfy both prongs of the *Strickland* test. *People v. Donegan*, 2012 IL App (1st) 102325, ¶ 30, 2012 WL 2402672, at \*6.

¶ 39 2. *Ineffective-Assistance-of-Counsel Claims on Direct Appeal*

¶ 40 Initially, we note this court's preference that a defendant raise ineffective-

assistance-of-counsel claims on collateral review instead of on direct appeal when the adjudication of such claims requires consideration of matters outside of the record on appeal. See *People v. Kunze*, 193 Ill. App. 3d 708, 725-26, 550 N.E.2d 284, 296 (1990) (declining to consider the defendant's ineffective-assistance arguments because such claims are better made in a petition for postconviction relief where a complete record can be made and the attorney-client privilege does not apply).

¶ 41 In *People v. Durgan*, 346 Ill. App. 3d 1121, 1142, 806 N.E.2d 1233, 1249 (2004), this court, quoting the United States Supreme Court's decision in *Massaro v. United States*, 538 U.S. 500, 504-05 (2003), explained why it is preferable that an ineffective-assistance-of-counsel claim be brought on collateral review instead of on direct appeal, as follows:

"When an ineffective-assistance claim is brought on direct appeal, appellate counsel and the court must proceed on a trial record not developed precisely for the object of litigating or preserving the claim and thus often incomplete or inadequate for this purpose. Under [*Strickland*], a defendant claiming ineffective counsel must show that counsel's actions were not supported by a reasonable strategy and that the error was prejudicial. The evidence introduced at trial, however, will be devoted to issues of guilt or innocence, and the resulting record in many cases will not disclose the facts necessary to decide either prong of the *Strickland* analysis. If the alleged error is one of commission, the record may reflect the action taken by counsel but not the reasons for it. The appellate

court may have no way of knowing whether a seemingly unusual or misguided action by counsel had a sound strategic motive or was taken because the counsel's alternatives were even worse. See [*Guinan v. United States*, 6 F.3d 468, 473 (7th Cir. 1993)] (Easterbrook, J., concurring) ("No matter how odd or deficient trial counsel's performance may seem, that lawyer may have had a reason for acting as he did ... Or it may turn out that counsel's overall performance was sufficient despite a glaring omission ...")." (Internal quotation marks omitted.)

¶ 42 Despite this preference, we nonetheless conclude that the record before us is sufficiently complete and adequate to address defendant's ineffective-assistance-of-trial-counsel claims. See *People v. Flores*, 231 Ill. App. 3d 813, 827-28, 596 N.E.2d 1204, 1213-14 (1992) (adjudicating defendant's ineffective-assistance-of-trial-counsel claims on direct appeal but reaffirming our preference as espoused in *Kunze*).

¶ 43 *3. Defendant's Other-Crimes-Evidence Claim*

¶ 44 Defendant argues ineffective assistance of trial counsel in that his counsel failed to prevent the jury from considering other-crimes evidence. Specifically, defendant contends that his counsel improperly allowed the venire to learn about his prior conviction for unlawful possession of a weapon by a felon. We disagree.

¶ 45 In support of his claim, defendant asserts that the record shows his counsel was unreasonable because he later argued to the trial court that an evidence stipulation, which included defendant's prior conviction for unlawful possession of a weapon by a felon, would be

highly prejudicial. Defendant, however, omits the following rationale his counsel expressed to the court as to why counsel allowed the court to read defendant's indictment to the jury:

"I think the wiser choice would be to not include in an evidence stipulation the Unlawful Use of Weapons because, unlike the reference in the indictment, the Court cautioned the jury the indictment is not evidence. \*\*\* So my concern would be, as I said, a little different than when the Court read the indictment, and then shortly thereafter, tells them that that is only the method of placing [defendant] on trial.

This evidence stipulation is a little bit different, and that is now evidence as opposed to what I would call information; and so, your Honor, as I said, I would just worry about the jury being affected by that, and feeling that [defendant] is guilty for no other reason that he has committed the exact same offense before."

¶ 46 In this case, we need not address the propriety of the decision made by defendant's counsel to allow the jury to hear the content of his indictment because defendant has failed to articulate how the absence of any mention of his prior conviction for unlawful possession of a weapon by a felon to the venire members would have resulted in a different outcome—that is, that the jury would have acquitted him given the overwhelming evidence presented by the State.

¶ 47 Here, the jury considered (1) defendant's recorded confession that he owned the revolver Stanfield recovered and (2) his later attempts to recant his confession, claiming that he was merely attempting to protect Matherly. Despite his claim that he had no knowledge of the

revolver before the police search uncovered its existence, defendant correctly described the rusty physical condition of the weapon, adding that (1) he "guessed" the revolver was unloaded and (2) the concealed internal firing pin was rusty. In addition, defendant's claim that he was able to describe the revolver because he saw it while at Matherly's apartment was rebutted by Stanfield's testimony that he never displayed the weapon in defendant's presence and instead, concealed the weapon in an envelope.

¶ 48 Because of the overwhelming strength of the State's case, we conclude that defendant has failed to meet his burden under the prejudice prong of the *Strickland* test—that is, defendant has failed to show that but for counsel's error, a reasonable probability existed that the jury would have acquitted him of the State's charge.

¶ 49 *4. Defendant's PSI Claim*

¶ 50 Defendant also argues ineffective assistance of trial counsel in that his counsel failed to determine whether his PSI was accurate. Defendant contends that "it became apparent that despite his duty to do so," defendant's new counsel "failed to investigate the accuracy of [his PSI]" and to offer mitigating evidence at his sentencing hearing. In this regard, defendant asserts that the trial court relied heavily on the State's representation that he was being sentenced on his tenth felony conviction when, in fact, he had "only seven felony *cases*." (Emphasis added.)

¶ 51 In response, the State contends that defendant's claim fails as the State's recital of defendant's PSI, "was completely accurate because defendant did have nine prior felony convictions, albeit under only six different case numbers." (Apparently, defendant was counting this felony case as his seventh.) In this regard, defendant's PSI outlines defendant's felony convictions, as follows:

| Date             | McLean Co.<br>Case No. | Charge            | Class |
|------------------|------------------------|-------------------|-------|
| January 16, 1999 | 99CF0511               | Stalking          | 4     |
| March 8, 2001    | 00CF1492               | Burglary          | 2     |
| March 8, 2001    | 00CF1492               | Burglary          | 2     |
| August 3, 2004   | 03CF0970               | Gun Possession*   | 2     |
| August 3, 2004   | 03CF0970               | Gun Possession*   | 2     |
| August 3, 2004   | 03CF0970               | Gun Possession*   | 2     |
| January 28, 2005 | 04CF0884               | Escape            | 2     |
| January 28, 2005 | 04CF0910               | Drug Possession** | 1     |
| January 28, 2005 | 04CF1115               | Drug Possession** | 1     |

\* Unlawful possession of a weapon by a felon.

\*\* Possession with intent to deliver not more than 15 grams of any substance containing cocaine.

¶ 52 In his reply brief, defendant reiterates his ineffective-assistance-of-counsel claim, adding that the multiple convictions in McLean County case Nos. 00-CF-1492 and 03-CF-0970 do not prove that a conviction for each count was entered. We note, however, that in making this argument, defendant fails to specifically articulate the inaccuracies in his PSI or the mitigating evidence that his counsel unreasonably failed to highlight at his sentencing hearing.

¶ 53 In this case, the record at defendant's February 2011 sentencing hearing showed that defendant's counsel informed the trial court that (1) he had reviewed the PSI with defendant and (2) no corrections or additions were required. Defendant addressed the court and acknowledged his prior criminal history, asking the court to consider his age at the time those convictions

occurred. The trial court then considered defendant's PSI, which showed the aforementioned nine previous felony convictions under six different cases.

¶ 54 Here, as previously stated, defendant claims that his counsel was ineffective, in part, for not ensuring his PSI was accurate, but then fails to articulate the supposed inaccuracies. In addition, defendant fails to identify the mitigating circumstances his counsel neglected to argue during his sentencing hearing. Accordingly, we decline to address defendant's ineffective-assistance-of-counsel claim because it lacks the requisite factual basis.

### C. Defendant's Excessive-Sentence Claim

¶ 55 Last, defendant argues that the trial court's imposition of a 20-year prison sentence was excessive. Specifically, defendant contends that "his behavior was not severe or serious enough to warrant the sentence imposed." We disagree.

¶ 56 The sentence imposed by a trial court is granted great deference because the court is generally in a better position than a reviewing court to weigh factors such as the defendant's credibility, demeanor, general moral character, mentality, social environment, and habits. *People v. Calabrese*, 398 Ill. App. 3d 98, 126, 924 N.E.2d 6, 29 (2010). This deference provides a trial court the latitude to impose a sentence that falls within the statutory range prescribed for the offense. *People v. Perkins*, 408 Ill. App. 3d 752, 762-63, 945 N.E.2d 1228, 1238 (2011). A sentence that is within statutory limits is excessive and, thus, an abuse of the court's discretion only when it is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense. See *People v. Luna*, 409 Ill. App. 3d 45, 52, 946 N.E.2d 1102, 1110 (2011).

¶ 57 In this case, defendant—because of his criminal history—was required to be



¶ 62 JUSTICE COOK, specially concurring:

¶ 63 I write separately regarding defendant's trial attorney's assent to the reading of the indictment before trial, including the allegation that defendant had previously been convicted of unlawful possession of a weapon by a felon. I disagree that the evidence was so overwhelming that defendant could not possibly show he was prejudiced, even if his counsel did provide substandard representation. Instead, I would hold defendant is unable to show prejudice because the jurors were instructed not to consider the allegations in the indictment as evidence against him.

¶ 64 The State's evidence in this case, while more than enough to sustain defendant's conviction, was not overwhelming. Defendant claimed at trial that the gun he was charged with possessing belonged to his roommate, Matherley. The gun was found in Matherley's closet under a pile of Matherley's clothing. Defendant testified that he accepted responsibility for the gun in order to protect Matherley. His confession, in which he provided details of the gun that he may have learned from his association with Matherley, is consistent with an attempt to shield her from prosecution. The State presented evidence that contradicted defendant's claims at trial that he was able to observe the gun when police were questioning Matherley and that he had no prior knowledge of the gun in the apartment. Nevertheless, a reasonable juror could have believed defendant's claim that the gun belonged to Matherley. The State's case was not so strong as to foreclose the possibility that defense counsel's failure to object to the reading of the indictment, if unreasonable, affected the outcome of defendant's prosecution.

¶ 65 Defendant relies on the proposition that evidence of a defendant's prior crimes, identical to the charge in the present case, is unduly prejudicial. See *People v. Walker*, 211 Ill. 2d

317, 338, 812 N.E.2d 339, 351 (2004). However, there is a distinction between evidence presented at trial and allegations contained in a charging instrument. While the trial court informed the jurors of the charges in the indictment, which alleged the earlier conviction, no evidence of defendant's previous gun crime was admitted in this case.

¶ 66 This distinction is determinative because the indictment's charges were prefaced by the trial court's admonition that the allegations should not be considered as evidence against defendant. The principle that the jury is presumed to follow the court's instructions is long-standing. *People v. Taylor*, 166 Ill. 2d 414, 438, 655 N.E.2d 901, 913 (1995). For example, in *Taylor*, 166 Ill. 2d at 437, 655 N.E.2d at 912, the defendant, who faced a death sentence, argued the trial court erred by allowing the jurors to view a slip opinion concerning capital sentencing that was inadvertently sent back to them during deliberations. The trial court recognized the error before the jury returned a verdict and accordingly issued a lengthy instruction that the jurors were "not to consider the opinion in any way whatsoever in their deliberations." *Id.* at 438, 655 N.E.2d at 912. The supreme court held the trial court's "careful instructions" cured the error of sending the slip opinion to the jury room. *Id.* at 438, 655 N.E.2d at 913. In other words, the supreme court concluded the error could not have prejudiced the defendant.

¶ 67 Similarly, defense counsel's alleged mistake could not have prejudiced defendant in this case. The jury was instructed not to consider the charges, including the allegation that he had been convicted of the same offense on a prior occasion, as evidence against him. A presumption arose that the jurors obeyed this instruction and did not infer the existence of the previous conviction from the allegation. Defendant has not rebutted this presumption. Therefore, the asserted mistake could not have affected the outcome of the proceedings. Because the

majority reached the same conclusion, that defendant's ineffective-assistance claim lacks merit, I concur in the judgment.